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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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DYKEMA GOSSETT PLLC FRANKLIN SQUARE, THIRD FLOOR WEST 1300 I STREET, NW WASHINGTON, DC 20005			EXAMINER NGUYEN, HUONG Q	
			ART UNIT 3736	PAPER NUMBER
			MAIL DATE 10/11/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/772,426

Applicant(s)

STURZEBECKER, EKKEHARD

Examiner

Helen Nguyen

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 3 and 5-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2/9/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Species 1 drawn to Claims 1-2, 4, and 7-8 in the reply filed on 9/13/2007 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 3 and 5-6 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species. Election was made **without** traverse in the reply filed on 9/13/2007.
3. It is also noted that while Applicant has elected Claim 7 as drawn to the elected species, Claim 7 states dependency back to Claim 6, which has not been elected. Therefore, Claim 7 is also withdrawn from further consideration.
4. **Claims 1-2, 4, and 8** are therefore pending and under prosecution.

Priority

5. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in Application No.10772426, filed on 6/17/2004. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

6. The information disclosure statement (IDS) submitted on 2/9/2005 is/are acknowledged. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.
7. It is noted that the listing of references in the specification (p.2-3 and 7) is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Drawings

8. It is noted that the application does not contain any drawings. The submission of drawings might be useful in clearly depicting the claimed invention.

Claim Objections

9. **Claim 8** is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only. See MPEP § 608.01(n). Accordingly, the claim has not been further treated on the merits.

Claim Rejections - 35 USC § 112

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 3736

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. **Claims 1-2 and 4** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
12. Specifically, said claims fail to positively recite method steps and therefore, it is unclear what method steps are encompassed by the claim terminology.
13. The recitation of “the time domain,” “the individual epochs,” and “the frequency domain” in Claim 1 lack antecedent basis.
14. The recitation of “the asynchronous EEG” in Claim 2 lacks antecedent basis.
15. The recitation of “the spectral lines” and “the harmonics” in Claim 4 lack antecedent basis.
16. Applicant is requested to thoroughly review the claims for other instances of such objections and make the appropriate corrections.

Claim Rejections - 35 USC § 102

17. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

18. **Claims 1-2 and 4** are rejected under 35 U.S.C. 102(b) as being anticipated by John (US Pat No. 4705049) or Ozdamar et al (US Pat No. 5230344).

Art Unit: 3736

19. In regards to **Claim 1**, John discloses a method for objective verification of auditory steady-state responses (ASSR) in the time domain whereby the individual epochs are transformed into the frequency domain (Col.2: 10-14) through FFT (Fast Fourier Transform), wherein the response inherently comprises individual epochs that are subjected to the FFT.

20. In regards to **Claim 2**, John discloses the response is made free from noise of the asynchronous EEG in the frequency domain (Col.2: 32-35).

21. In regards to **Claim 4**, John discloses the response inherently comprises spectral lines of the harmonics which remain uninfluenced.

22. In regards to **Claim 1**, Ozdamar et al disclose a method for objective verification of auditory steady-state responses (ASSR) in the time domain whereby the individual epochs are transformed into the frequency domain (Col.4: 32-36), wherein the signal streams inherently comprise individual epochs transformed into the frequency domain, such as by using FFT (Col.4: 50-53).

23. In regards to **Claim 2**, Ozdamar et al disclose the response is made free from noise of the asynchronous EEG in the frequency domain (Col.4: 13-25).

24. In regards to **Claim 4**, Ozdamar et al disclose the response inherently comprises spectral lines of the harmonics which remain uninfluenced.

Art Unit: 3736

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen Nguyen whose telephone number is 571-272-8340. The examiner can normally be reached on Monday - Friday, 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HQN
10/3/2007

HN

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